

WORKERS' COMPENSATION PROPOSED LEGISLATION

Presentation to Labor Management Advisory Council
August 23, 2016

Kalispell Regional Healthcare System
Brad Roy, PhD
Kelly D. Stimpson, JD

I. PROPOSED LEGISLATION

II. SUMMARY OF THE ISSUES

III. SAMPLING OF SIMILAR LEGISLATION IN OTHER STATES

“PROMOTE SAFETY, COMBAT FRAUD”

I. PROPOSED LEGISLATION

[39-71-125 (new) or added to 39-71-316 Filing true claim – obtaining benefits through deception or other fraudulent means.]

False statement on employment application or questionnaire.

A false statement made by an employee, either in an employment application or a questionnaire calling for the disclosure of the employee's medical condition, bars all benefits under this title if: 1) the employee knowingly or willfully, by omission or commission, makes a false representation regarding the employee's physical condition; 2) the employer relies upon the false representation and this reliance is a contributing factor in the hiring of the employee; and 3) there was a causal connection between the false representation and the injury for which benefits are claimed.

“PROMOTE SAFETY, COMBAT FRAUD”

II. SUMMARY OF THE ISSUES

I. Safety

In the post-offer, pre-hire setting, when an applicant is not forthcoming in responding to legally permissible questions about medical limitations, the employer is denied the opportunity to provide reasonable accommodations, resulting in **safety** risks in the workplace.

Furthermore, injuries that result from an employee trying to do more than he/she has been medically cleared to do are **costly** to the employee, the employer, and the system. When accurate information about an employee's limitations is provided, workplace safety is enhanced and expensive claims can be avoided.

For example, an individual, who did not disclose that he had a previous back injury and is under a current lifting restriction of 20 lbs., is hired and subsequently asked to lift more than he is capable of lifting. Workplace safety is impacted in the following ways:

- The employee may injure or re-injure himself/herself
- The employee may injure co-workers
- The employee may injure population served and/or bystanders
(*E.g., Nurse drops hospital patient*)

Had the applicant disclosed the pre-existing condition, the employer could have accommodated the lifting restriction through light or modified duty, or, if lifting were an essential function of the job, the employer would have recognized that the applicant did not qualify. The proposed legislation is supportive of employees (both the affected employee and co-employees), employers, the public, and the system.

II. The Cost of Fraud

Insurance fraud is a multi-billion dollar per year enterprise¹. The amount of workers' compensation claims paid out annually is reported to be \$60.2 billion. Workers' compensation fraud is estimated to cost about ten percent of that or \$6 billion each year². While most employees are honest, a small number scam the system for personal profit, causing enormous damage. People who defraud the workers compensation system increase already expensive insurance premiums on businesses, draining business profits and costing honest workers their pay and jobs. Workers comp fraud also is an affront to the truly injured workers and makes it harder for them to get the compensation they deserve.

“PROMOTE SAFETY, COMBAT FRAUD”

¹ Coalition Against Insurance Fraud 1012 14th St. NW Suite 200 Washington DC 20005

² The Griffith Insurance Education Foundation; Workers' Compensation Fraud

III. SAMPLING OF SIMILAR LEGISLATION IN OTHER STATES

North Dakota § 65-05-34. False statement on employment application

A false statement in an employment application made by an employee bars all benefits under this title if:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon the false representation and this reliance was a substantial factor in the hiring; and
3. There was a causal connection between the false representation and the injury.

Idaho § 72-441. No compensation in case of misrepresentation

No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease.

Georgia § 34-9-291. False representations by employee

No compensation shall be payable for an occupational disease if the employee, in the course of or in the course of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing to such employer as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease.

North Carolina § 97-12.1. Willful misrepresentation in applying for employment

No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that (i) at the time of hire or in the course of entering into employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during the course of a post-offer medical examination:

- (1) The employee knowingly and willfully made a false representation as to the employee's physical condition;
- (2) The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
- (3) There was a causal connection between false representation by the employee and the injury or occupational disease.

South Carolina § 42-11-80 Willful misrepresentation by employee as to absence of disease; waivers

If an employee, at the time of his employment, willfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable. If an employee who has previously suffered

from an occupational disease desires to continue in an employment to which such a disease is a hazard, he may waive his right to receive further benefits for disablement or disability from such disease by written agreement approved by the commission in accordance with such rules as it may promulgate.

Louisiana §1208. Misrepresentations concerning benefit payments; penalty

- A. It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.
- B. It shall be unlawful for any person, whether present or absent, directly or indirectly, to aid and abet an employer or claimant, or directly or indirectly, counsel an employer or claimant to willfully make a false statement or representation.
- C. [Criminal penalties up to 10 years in prison and \$10,000 fine]

§1208.1. Employer's inquiry into employee's previous injury claims; forfeiture of benefits. Nothing in this Title shall prohibit an employer from inquiring about previous injuries, disabilities, or other medical conditions and the employee shall answer truthfully; failure to answer truthfully shall result in the employee's forfeiture of benefits under this Chapter, provided said failure to answer directly relates to the medical condition for which a claim for benefits is made or affects the employer's ability to receive reimbursement from the second injury fund.

New Mexico §52-1-28.3. False statements or representations with regard to physical condition; forfeiture.

- A. When an employer asks by written questionnaire for the disclosure of a worker's medical condition, no compensation is payable from that employer for an injury to that worker under the provisions of the Workers' Compensation Act if:
 - (1) the worker knowingly and willfully concealed information or made a false representation of his medical condition;
 - (2) the employer:
 - (a) was not aware of the concealed information that, if known, would have been a substantial factor in the initial or continued employment of the worker; or
 - (b) relied upon the false representation, and this reliance was a substantial factor in the initial or continued employment of the worker; and
 - (3) a medical condition that was concealed or falsely represented substantially contributed to the injury or disability.
- B. The provisions of this section do not apply unless, in the written questionnaire, the employer clearly and conspicuously discloses that the worker shall be entitled to no future compensation benefits if he knowingly and willfully conceals or makes a false representation about the information requested.
- C. Nothing in this section shall be construed to deny or limit compensation benefits paid or being paid for prior injuries.
- D. This section shall apply only prospectively. It shall not alter, as to prior reports, the law governing questionnaires and information reported that was in effect prior to the effective date of this section.

Notes:

1. More than half the states have a provision that applies specifically to benefit payments received as the result of fraudulent misrepresentation: AZ, AR, CA., CO, DE, DC, FL, GA, HI, IN, LA, ME, MI, MN, MO, NE, NV, NH, NY, OH, OK, OR, PR, UT, VT, WA, WI and WY
2. In general, all states have special disqualifications covering fraudulent misrepresentation to obtain or increase benefits. US Dept of Labor
3. Some state statutes deal with workers' compensation fraud more broadly, for example:

Vermont 21 V.S.A. § 708 A person who willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, ...may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to compensation under the provisions of this chapter after a determination ...that the person has willfully made a false statement or representation of a material fact. (emphasis added)

Washington RCW 51.32.240 (5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

Minnesota § 176.179 Recovery of Overpayments *[When an employee perpetrates a fraud in order to obtain workers' compensation benefits, the employer and insurer are entitled to reimbursement of benefits paid as the employee has received those benefits in bad faith.]* ... Where the commissioner or compensation judge determines that the mistaken compensation was not received in good faith, the commissioner or compensation judge may order reimbursement of the compensation. For purposes of this section, a payment is not received in good faith if it is obtained through fraud, or if the employee knew the compensation was paid under mistake of fact or law, and the employee has not refunded the mistaken compensation.

4. Fraud is defined as a specific crime for claims fraud in 49 states. Most states (43) have laws that classify any misrepresentation or false statement made for the purpose of receiving payments under the workers' compensation laws as a felony.

“PROMOTE SAFETY, COMBAT FRAUD”